IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.89 OF 2007

Kalpana Kutty,]
Proprietor of K. Film Kompanie,]
Age : 37 years, Occ.Business,]
Add:- F-802, Golden Square,]
C.T.S. Road Kalina, Santacruz(E),]
Mumbai-400 098.] ..PETITIONER.

Versus

The State of Maharashtra,]
through Sr.P.I. Kalina Police]
Station.] ..RESPONDENT.

..

Mr.S.M.Gorwadkar, Adv. for the Petitioner.
Mr.M.S.Mhambre, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR, &
SMT.V.K.TAHILRAMANI, JJ.

DATE OF RESERVING THE JUDGMENT : 2ND AUGUST, 2007.

DATE OF PRONOUNCING THE JUDGMENT : 2ND NOVEMBER, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. The petitioner is a proprietor of a firm which undertakes executive production of advertising and cinematography films. The petitioner entered into a contract with one Mercurio Cinematografics. The petitioner was to organise production of a 60 seconds film to be used for promotion of Asian Games 2006 to be held in Doha Qatar. The

petitioner was to organise for the shooting of the said 60 seconds film to be filmed in India. The petitioner produced the said Indian Part of the film. As monies were not paid as agreed and as demanded by the petitioner, the petitioner filed a complaint under Section 51 of the Copyright Act against the accused with Antop Hill Police Station. The case of the petitioner is that though the offence committed under Section 51 of the Copyright Act is punishable with imprisonment for a term of upto three years and fine and hence a cognizable offence, yet the FIR was not registered. Hence the present Petition.

2. In this Petition, following questions arise :-

a. Whether once an information relating to commission of a cognizable offence is received by a police officer in charge of a police station, he is duty bound to register a FIR under section 154 of the Code of Criminal Procedure.

b. Whether it is open to the police officer to make a preliminary inquiry to find out whether information received by him discloses cognizable offence or not.

c. Whether remedy of filing a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code is open to a person aggrieved by the refusal of the police officer to register a FIR when alternative remedy of filing a private complaint is open to him.

3. The learned counsel appearing for the petitioner and the learned APP have addressed us on the above questions.

4. We have heard Mr.Gorwadkar, the learned counsel appearing for the petitioner. Mr.Gorwadkar look us to the relevant provisions of the Code. He submitted that section 154 of the Code refers to

every information relating to a cognizable offence. The word "Information" is unqualified as to the truth or veracity of the said information. According to Mr.Gorwadkar, section 154 of the Code does not give any discretion to the officer in charge of a police station to make any inquiry to satisfy himself that a cognizable offence has been committed or has been disclosed when he receives an information which relates to commission of a cognizable offence and he has no option but to register the offence.

5. Mr.Gorwadkar submitted that at the stage of section 154, no discretion vests in the police officer. According to Mr.Gorwadkar, even frivolous complaints or false complaints or exaggerated complaints are required to be registered. Mr.Gorwadkar placed reliance on the decision in the case of **Ramesh Kumari Vs. State (NCT of Delhi) & Others, (2006) 2 SCC 677=AIR 2006 SC 3376** and **Mohindro Vs. State of Punjab, AIR 2001 SC 2113**.

6. Mr.Gorwadkar submitted that it is true that the complainant can file a private complaint. But

availability of an alternative remedy is no substitute for registration of FIR. According to Ms.Gorwadkar refusal to register a FIR in spite of disclosure of cognizable offence amounts to dereliction of duty by police. In support of his submissions Mr.Gorwadkar relied on the judgment of the Supreme Court in the case of **Ramesh Kumari (supra)**.

7. The learned APP Mr.Mhambre contended that in case of criminal breach of trust or cheating, it may be necessary to ask the complainant to disclose cogent materials regarding the ingredients of such offence. According to the learned APP Mr.Mhambre, whether a complaint discloses a cognizable offence or not is to be primarily decided on the basis of the contents of the complaint and the material in support thereof or material gathered as a result of discreet enquiry conducted by the police officer. Mr.Mhambre further submitted that in **Shashikant Vs. Central Bureau of Investigation & Ors., (2007) 1 SCC 630 = JT 2006 (9) SCC 603** the Supreme Court has discussed the provisions of the CBI Manual which provides the procedure for preliminary enquiry and

held that to carry out the preliminary enquiry even under the Code is not unknown. Our attention is drawn to Rule 113 (2) of the Police Manual which provides for an enquiry before registration of FIR. It was submitted that the provisions of the Police Manual and the provisions of CBI Manual have the same object and, therefore, the observations of the Supreme Court made while appreciating the procedure prescribed by CBI Manual would be equally applicable to the provisions of Rule 113(2) of the Police Manual. In support of his submissions, the learned APP relied on the judgments of the Supreme Court in **State of U.P. Vs. Bhagwant Kishore Joshi, AIR 1964 SC 221** and **P.Sirajuddin Etc. Vs. State of Madras Etc. 1970 (1) SCC 595** and the judgment of this Court in **Kotak Mahindra Bank Limited Vs. Nobiletto Finlease & Investment Pvt. Ltd. & Anr., 2005(3) Mh.L.J. 512**. Mr.Mhambre pointed out that the requirement of preliminary enquiry as contemplated in paragraphs 80 and 81 of Bhajanlal's case (supra) is also held to be necessary in case of medical practices by the Supreme Court in **Jacob Mathew Vs. State of Punjab & Anr., 2005(6) SCC 1**. The learned APP submitted

that requirement of preliminary cannot be restricted to public servants or to doctors. Whether preliminary enquiry is necessary or not will depend on facts and circumstances of each case. Learned APP further pointed out that alternative remedy of filing a private complaint is always open to a person who is aggrieved by the refusal of the police officer to register an offence. In this connection, he relied on the decision in the case of **Minu Kumari & Anr. Vs. State of Bihar, (2006) 4 SCC 359**. He submitted that since alternative remedy of filing a private complaint is available, writ jurisdiction of this court should not be invoked in such cases.

8. In reply, Mr.Gorwadkar, the learned counsel for the petitioners contended that reliance placed by Mr. Mhambre on the above judgments is misplaced. He submitted that in **Shashikant's case** (supra), the Supreme Court was dealing with cases arising out of Prevention of Corruption Act. Requirement of preliminary enquiry in such cases assuming it is there, cannot be read into other cases. Ratio of those judgments is not applicable

to the present case. Mr.Mhambre submitted that in **Shashikant's case** (supra), the Supreme Court has made a reference to **Vineet Narain's case** (supra). In **Vineet Narain's case** (supra), the Supreme Court has observed that the CBI Manual based on statutory provisions of the Code provides essential guide-lines for CBI's functioning. Referring to CBI Manual in **Shashikant's case** (supra), the Supreme Court has held that it provides for a preliminary inquiry which in terms of paragraph 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. Mr.Gorwadkar contended that in **Shashikant's case** (supra), the CBI had received an anonymous complaint. The question was whether it was obligatory on the part of respondent 1 to lodge a FIR and carry out a full-fledged investigation about the allegations made in the complaint. Mr. Mhambre contended that on the basis of CBI Manual, the Supreme Court observed that a preliminary enquiry may be carried out to find out the truth or otherwise of the allegations contained in the complaint.

Mr.Gorwadkar contended that CBI Manual cannot be equated with the police Manual. Mr.Gorwadkar submitted that the judgments cited by Learned APP refer to a totally different fact-situation.

9. Before we proceed to deal with the arguments advanced by the learned counsel, it is necessary to reproduce section 154 of the Code. It reads thus :

> "154.Information in cognizable case - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person given it,l and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe

in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the information.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of

the police station in relation to that offence.

10. We shall now refer to the various judgments on which reliance is placed by the learned counsel appearing for the parties.

11. In **Mohindro's case** (supra), which was relied upon by Mr.Gorwadkar, the Supreme Court was dealing with a situation where the appellant had approached the authority for registering a case against the accused but the police never registered a case and never put the law in motion. Having failed in an attempt in the High Court to get a case registered, the appellant approached the Supreme Court. The counsel for the State of Punjab stated that there had been an enquiry. The Supreme Court expressed that there can be no enquiry without registering a criminal case. The Supreme Court observed that on the facts alleged, it transpired that the appellant approached the police for registering a case and get the allegation investigated into an offence yet for no reason whatsoever the police failed to register the case.

The Supreme Court in the circumstances directed that a case be registered on the basis of the reports lodged by the appellant and thereafter, the matter be duly investigated into and appropriate action be taken accordingly.

12. In the case of **Ramesh Kumari** (supra) the grievance of the appellant was that though an information of a cognizable offence having been committed by a police officer had been filed by the appellant before the SHO, no case was registered by the officer. Thereafter, the matter was brought to the notice of the Police Commissioner without any result. The appellant had filed a contempt petition in the High Court and it was pending. On the basis of the information filed by the appellant, the High Court observed that the appellant had an alternative remedy available to her. The High Court directed the respondents who was seized of the petitioners complaint to examine it and pass appropriate orders. The Supreme Court did not approve of the High Court's approach. It was argued before the Supreme Court that pursuant to the High Court's direction the complaint had

been subsequently examined and it was found that no genuine case was established. The Supreme Court observed that genuineness or credibility of the information can only be considered after registration of the case. Genuineness or credibility is not a condition precedent for registration of a case. The Supreme Court clarified that availability of an alternative remedy or pendency of a contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer. Since the complaint was against a police officer, the Supreme Court directed the CBI to register the case and complete investigation.

13. In the case of **P.Sirajuddin** (supra), the Supreme Court observed that before a public servant, whatever be his status is publicly charged with acts of dishonesty which amounts to serious misconduct and a first information is lodged against him, there must be some suitable enquiry into the allegations by a responsible officer, because lodging of such a report against persons

holding top positions may do incalculable harm to such officers. It is clear, therefore, that the Supreme Court accepted that there can be a preliminary enquiry into the allegations before the FIR is lodged.

14. In the case of **State of Haryana Vs. Bhajanlal, AIR 1992 SC 604**, the Supreme Court referred to the observations in Sirajuddin's case and expressed that it was in agreement with those observations. The said observations are as under :

> Before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and first information is lodged against him, there must be same suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position

> in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general.... The means adopted no less than the end must be impeccable."

15. In **Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1**, the appellant doctor along with another doctor was charged under section 304-A read with section 34 of the IPC. On a reference, the Supreme Court was considering the concept of negligence in particular professional negligence and as to when and how it gives rise to an action under the criminal law. The Supreme Court noted that the cases of doctors being subjected to criminal prosecution are on an increase. The Supreme Court emphasised the need to protect doctors from frivolous and unjust prosecutions. The Supreme Court observed that many a complainant prefer recourse to criminal process as a tool for pressuring the medical professional for extracting uncalled for or unjust compensation and expressed

that such malicious proceedings have to be guarded against. The Supreme Court observed that the investigating officer should before proceeding against the doctor accused of rash and negligence act or omission obtain an independent and competent medical opinion preferably from a doctor. Therefore, the Supreme Court recognized the need to make some preliminary inquiry before a case is registered against a doctor on the basis of complaint alleging cognizable offence.

16. In the case of **Shashikant** (supra) the appellant had made an anonymous complaint to the CBI alleging corrupt practices and financial irregularities on the part of some officers of Railways. On the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. The investigating officer was of the opinion that it was not necessary to register a FIR. He recommended holding of departmental proceedings. The recommendation found favour with the higher officers. Departmental proceedings were initiated. Penalties were imposed on the said officers and the

cases were closed against them. In the meanwhile the appellant was transferred. He challenged his transfer before the Central Administrative Tribunal. His application was rejected. He then filed a writ petition, inter alia, praying for reopening of the preliminary inquiry and for a direction to the CBI to register offence against the said officers. The High Court dismissed the said writ petition holding that the grievance of the appellant that the CBI was not doing its duty was not well founded. The appellant challenged the said order in the Supreme Court. It was argued before the Supreme Court that procedure prescribed in the Code was not followed. The Supreme Court referred to the provisions of the Delhi Special Police Establishment Act, 1946 under which the CBI is constituted. The Supreme Court observed that this Act applies in regard to charges of corruption made against the employees of Union of India and CBI Manual was made by the Central Government providing for detailed procedure as regards the mode and manner in which complaint against police servants are dealt with. The Supreme Court then quoted extensively from its judgment in **Vineet**

Narain & Ors. Vs. Union of India & Anr., JT 1997 (10) SC 247, where the Supreme Court has referred to CBI Manual which provides for a preliminary inquiry. The Supreme Court observed that a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. The Supreme Court then observed that although ordinarily in terms of section 154 of the Code, when a report is received relating to the cognizable offence, FIR should be lodged, to carry out a preliminary inquiry even under the Code, is not unknown. The Supreme Court further observed that when an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. This judgment clearly indicates that preliminary enquiry need not be restricted only to the cases of public servants charged with corruption charges.

It is contemplated in the Code also.

17. In the case of **State of U.P. Vs. Bhagwant Kishore Joshi, AIR 1964 SC 221**, Justice Modholkar referred to the Supreme Court Judgement in **H.N.Rishbud & Anr. Vs. State of Delhi, AIR 1955 SC 196** wherein it is held that under the Code, investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the Commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b)the search of places or seizure of things considered necessary for the investigation and to be produced at the trial and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under section 173. Justice Mudholkar then observed that the Supreme

Court has however not said that if a police officer takes merely one or two steps indicated by it, what he has done must necessarily be regarded as investigation. Justice Mudholkar further observed that in the absence of any prohibition in the Code, express or implied, he was of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. In **Bhajanlal's case** (supra), the Supreme Court quoted with approval justice Mudholkar's observations made in this case that merely making some preliminary enquiries upon receipt of information from any anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. Thus, the Supreme Court endorsed the opinion expressed by Justice Mudholkar that there can be a preliminary inquiry before a cognizable offence is registered. It is pertinent to note that in **Shashikant's case** (supra) also, the Supreme Court has quoted Justice Mudholkar's observations with approval.

18. In **Kotak Mahindra Bank Ltd. Vs. Nobiletto Finlease Investment Pvt. Ltd. & Anr** (supra) a complaint was filed by the respondent alleging that the petitioner-bank through its directors and officers was seeking to extort money. One of the questions before this court was whether prior to the registration of FIR, in a given case, it was open for the police to hold a preliminary inquiry. This court referred to Rule 113 (12) of the Bombay Police Manual, 1959. We may reproduce the same for convenience :

> "It is always advisable, before recording first information, to warn the informant against giving false or exaggerated information and also to give him an opportunity to think coolly what he wishes to say. If the information, though whatever channel received, does not disclose a cognizable offence but indicates the necessity for further enquiry, the Police Station Officer should note

> the information in the station diary and proceed to the place concerned; and if after inquiry he is satisfied that the facts disclose a cognizable offence, he should deal with it according to law.
>
> Care should, however, be taken not to effect arrest unless adequate evidence is available against the accused". (emphasis supplied).

. This Court observed that the above Rule requires that if the officer considers it necessary to conduct preliminary enquiry before recording FIR, such officer shall record the information in the station diary before proceeding to enquire into the matter even for the purpose of ascertaining the truthfulness of the accusation. This court further observed that where the police authorities are required to hold preliminary enquiry it should preferably and of course as far as possible, be a discreet enquiry. This court further held that preliminary enquiry may be necessary in a given

case and may not be held as a general rule. Whether it is necessary or not would depend on facts and circumstances of each case. It was further observed that in cases where the accusations made in the complaint are doubtful the police can certainly enquire as to whether the accusations prima facie appear to disclose a cognizable offence. This court also referred to Standing Order No. 34 and held that station diary should disclose the steps taken by the police officer while conducting the preliminary inquiry. We may quote the relevant paragraph from the said Judgment :-

> "There cannot be doubt that once a complaint is filed, it is necessary for the police to ascertain whether the facts stated therein are true or false and whether the same disclose any cognizable offence or not. However, the modalities of ascertaining the truthfulness of the allegations in the complaint would depend upon the nature of the

allegations and the nature of the offence alleged. In case of criminal breach of trust or cheating, for ascertaining the truthfulness of the allegations, primarily it would be necessary to ascertain the same by asking the complainant to disclose cogent materials regarding the ingredient of such offence by the accused and unless such materials are disclosed and the police officer is prima facie satisfied about the commission of such offence, question of calling the person accused of commission of such offence cannot arise, unless, of course in an exceptional case it may be otherwise. But such an exceptional case is to be taken out by the complaint or at least the police officer should be satisfied about the same. Undoubtedly, once such materials are produced and if the same disclose cognizable offence, the police

> officer can certainly investigate into the matter by following the procedure prescribed for investigation in relation to such offence. Whether a complaint discloses cognizable offence or not, it is to be primarily decided based on the contents of the complaint and the materials in support of thereto or as a result of discreet enquiry. In a deserving case enquiry can be made with the person accused of having committed the offence. This elementary knowledge should be possessed by every police officer empowered to investigate into cognizable offence."

19. We are in agreement with the above observations in Kotak Mahindra which are infact in relation to the procedure. We are of the opinion that where the information received by a police officer indicates the necessity of further inquiry, preliminary inquiry prior to the registration of

offence can be conducted. We have already referred to the judgment in **Shashikant's case** where the Supreme Court has quoted from its judgment in **Vineet Narain's case** and after referring to CBI Manual which provides for preliminary inquiry held that preliminary inquiry prior to the registration of offence is not unknown even under the Code. On the same analogy, it can be concluded that Rule 113(2) of the Bombay Police Manual, which we have already quoted above contemplates a preliminary inquiry before recording FIR to find out whether cognizable offence is disclosed or not.

20. There is no reason to hold that preliminary enquiry can be conducted only in respect of complaints against public servants holding top positions. If a complaint appears to be in need of further inquiry to ascertain whether cognizable offence is disclosed or not, preliminary inquiry can be conducted before taking a decision whether to register the offence or not. Similarly, where source of information is of doubtful reliability i.e. an anonymous complaint preliminary inquiry can be conducted for checking up correctness of the

information.

21. It is keeping this angle in view of **Jacob Mathew's case** (supra), the Supreme Court held that in cases of doctors before registration of FIR expert doctor's opinion should be obtained. As held by this court in **Kotak Mahindra's case** (supra), in cases of alleged criminal breach of trust it may be necessary for the police to ask the complainant to disclose cogent material in support of the allegation. If merely on the basis of information of doubtful reliability i.e. an anonymous complaint cognizable offences are registered that can lead to great injustice. Where it is found necessary to conduct preliminary inquiry such inquiry should be done expeditiously and as far as possible and it should be discreet and in tune with Rule 113(12) of the Bombay Police Manual.

22. So also in a recent decision of the Supreme Court in Appeal (Crl.) No.1432 of 2007 dated 12.10.2007 in the case of **Rajender Singh Katoch Vs. Chandigarh Administration & Ors.**, it was observed

as under :-

> " Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. .."

. After considering the decision in the case of Ramesh Kumari it was further observed that :-

> "We are not oblivious to the decision of this Court in Ramesh Kumari V.

> State (NCT of Delhi) & Ors. [(2006) 2 SCC 677] wherein such a statutory duty has been found in the Police Officer. But, as indicated hereinabove, in an appropriate case, the Police Officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

. Thereafter reference was made to **Shashikant's case** (supra) wherein it is observed that evidently it was within the province of the police to commence a preliminary inquiry.

. In our opinion this decision and the earlier decisions sets at rest all doubts that indeed a preliminary inquiry can be conducted.

23. We shall now deal with the question whether writ petitions or petitions under Article 226 or under section 482 of the Code making grievance about non-registration of FIR disclosing cognizable offences should be entertained when alternative

remedy of filing a private complaint is open to the complainant.

24. In **All India Institute of Medical Sciences Employees Union Vs. Union of India & Ors., (1996) 11 SCC 582**, the petitioner had laid all the necessary information before the police as regards the offences committed by the Director of Institute of Medical Sciences but no action in that behalf had been taken. The petitioner moved the Delhi High Court for appropriate orders. The Delhi High Court did not entertain the petition. When the matter reached the Supreme Court, the Supreme Court observed that under section 154 of the Code on information relating to the commission of a cognizable offence being received, it has to be reduced to writing and the officer in charge of the police station has been empowered under Section 156 of the Code to investigate into the cognizable case as per the procedure prescribed under Section 157 of the Code. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge-sheet has to be submitted in the concerned court as envisaged in Section 173 of the Code. The

Supreme Court clarified that when the information is laid with the police but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the concerned Magistrate and the concerned Magistrate is required to enquire into the complaint as proved in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report if he finds that the Complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and issue process to the accused. The Supreme Court observed that the petitioner therein had not adopted either of the procedure provided under the Code and hence he was not entitled to approach the High Court by filing a writ petition and the High Court was justified in

refusing the relief to him.

25. In the case of **Minu Kumari** (supra), the Supreme Court considered the scope of Section 482 of the Code of Criminal Procedure. The Supreme Court referred to its judgments in the cases of **All India Institute of Medical Sciences Employees Union** (supra) and **Gangadhar Mhatre Vs. State of Maharashtra & Ors. (2004) 7 SCC 786** and reiterated that when information is laid with the police put no action in that behalf is taken, the complainant is given power under Section 200 of the Code to file the complaint before the concerned Magistrate and in such cases writ petition should not be entertained.

26. The above judgments make it clear that normally if the remedy of filing a private complaint is available, a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code should not be entertained. But in gross cases of grave injustice, like non registration of a cognizable offence committed by a police officer availability

of alternative remedy should not persuade this court to deny the petitioner the necessary relief by rejecting his writ petition filed under Article 226 of the Constitution or petition filed under section 482 of the Code. Whether such petitions should be entertained or not must be decided on the facts of each case and must be left to judicial discretion. Obviously such petitions would be entertained in exceptional cases of grave injustice.

27. We have already referred to **Ramesh Kumari's case** (supra), where the grievance of the appellant was that though an information of a cognizable offence having been committed by a police officer had been filed by the appellant, the SHO has not registered a case against the police officer. The Supreme Court held that availability of an alternative remedy would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer. However, in our opinion the recent decision of a Bench of three Judges of the Supreme Court in the case of **Aleque Padamsee & Ors. Vs.**

Union of India & Ors., 2007 AIR SCW 4783, sets all doubts at rest and concludes the issue that if there is inaction of the police officials in registering FIR, the aggrieved person can lay the complaint under Section 190 or 200 of Code of Criminal Procedure before the Magistrate having jurisdiction. This conclusion was arrived at after considering various decisions including those in the case of **Ramesh Kumari** (supra) and **Minu Kumari** (supra).

28. From the above discussion, the following conclusions emerge, which answer the questions raised before us :-

(a) When an information relating to the commission of a cognizable offence is received by an officer in charge of a police station, he would normally register a FIR as required by section 154(1) of the Code.

(b) If the information received indicates the necessity for further inquiry,

preliminary inquiry may be conducted.

(c) Where the source of information is of doubtful reliability i.e. an anonymous complaint, the officer in charge of the police station may conduct a preliminary inquiry to ascertain the correctness of the information.

(d) Preliminary inquiry must be expeditious and as far as possible it must be discreet.

(e) Preliminary enquiry is not restricted only to cases where the accused are public servants or doctors or professionals holding top positions. As to in which case preliminary inquiry is necessary will depend on facts and circumstances of each case. So also the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each

case.

(f) Whether a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code filed by a person making a grievance that though the complaint filed by him discloses a cognizable offence, the police have not registered offence, should be entertained by this court or not will depend on facts and circumstances of each case.

(g) Ordinarily, aggrieved person should be relegated to the alternative remedy of filing a private complaint.

(h) However, in gross cases of grave injustice, such petitions can be entertained by this court. Such cases would obviously be exceptional.

29. In view of the above, we find no merit in the present Petition . Hence, Writ Petition is

rejected. It would be open to the petitioner to file a private complaint before the Magistrate, if so advised.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]